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WATERS AND WATERCOURSES — NATURAL WATERCOURSES: OBSTRUCTION, POLLUTION, AND DIVERSION — EMBANKMENT TO PREVENT FLOODING. — The plaintiff and defendants owned land on opposite sides of a New Zealand river which frequently overflowed. To protect themselves, the defendants constructed an embankment some distance from the river bank. As a result, additional water was thrown on the plaintiff's land. The plaintiff brought an action for damages and an injunction. *Held*, that the suit be dismissed. *Gerard v. Crowe*, 37 T. L. R. 110 (Privy Council).

A riparian proprietor cannot erect an embankment which will cause injury to opposite land in times of ordinary floods. *Burke v. Sanitary District*, 152 Ill. 125, 38 N. E. 670; *Menzies v. Breadalbane*, 3 Bli. N. S. 414. But an embankment is justified if it will cause damage only during extraordinary overflows. *Kansas City, M. & B. R. R. Co. v. Smith*, 72 Miss. 677, 17 So. 78; *Nield v. London & Northwestern Ry. Co.*, 10 Exch. 4. Analogous to this qualification is the rule that anyone is justified, although harming others, in protecting himself from the sea, the "common enemy." *The King v. Commissioners of Sewers*, 8 Barn. & Cres. 355. By a combination and extension of the two doctrines it has now been held permissible to build a levee along a river which ordinarily overflows with such violence as to be on principle more nearly like the sea. *Cubbins v. Mississippi River Commission*, 241 U. S. 351. It is true that the common-law idea of "common enemy" was expressly negatived by its originator as to rivers. See *The King v. Trafford*, 1 Barn. & Ad. 874, 888. But European authorities recognize its extension to other waters. See 11 DEMOLOMBE, CODE NAPOLÉON, No. 30. And the common-law doctrine, originating in England, is often inapplicable in other continents. See *Lamb v. Reclamation District*, 73 Cal. 125, 131, 14 Pac. 625, 628. This is true of New Zealand, whose rivers are wild and turbulent. See 19 ENCYCLOPEDIA BRITANICA, 11 ed., 624. The case is interesting as an illustration of the elasticity of common-law doctrines in extending themselves to new situations.

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## BOOK REVIEWS

THE BRITISH YEAR BOOK OF INTERNATIONAL LAW. London: Henry Frowde and Hodder & Stoughton. 1920. pp. vi, 292.

The announcement of a new periodical on international law is gratifying to persons interested in the subject at any time, but it is particularly welcome at this time to have appearing the first number of a British periodical. With the large number of English leaders in international law, and with the growth of the international law journals on the continent and in American countries — new reviews have appeared within the past eighteen months in Argentina and Mexico — it is a bit curious that no attempt in the same direction has previously been made in England, aside from the International Law Notes which is not exclusively devoted to international law. This first number gives promise that the new annual will contribute very notably to the "wider knowledge and comprehension of the subject," which its editors deem essential at this time.

The editorial committee, consisting of Sir Erle Richards, Prof. A. Pearce Higgins, Sir John Macdonell, Sir Cecil Hurst and E. A. Whittuck, Esq., is in itself a guarantee of the success of the undertaking, and the editor, Cyril M. Picciotto, Esq., has admirably handled the first number. The assertion that "much that was regarded as definitely established must be re-examined in the light of modern developments" is an indication of the spirit in which the plan

is conceived. By providing "scope for well-informed and careful contributions to the science of international law, wherein the fruits of research can be applied to the problems of the day," the British Year Book ought to render a service to the science of international law which will not be confined to the British Empire. The encouragement of such contributions seems the more necessary when one recalls the great losses among the ranks of international lawyers during the past few months — this first number of the Year Book contains biographical sketches of four eminent scholars recently deceased, Professor Oppenheim, Dr. Lammach, Dr. Lawrence and Dr. Pitt Cobbett.

The leading articles in this volume cover a wide range and deal with some very interesting current problems. Sir Erle Richards' discussion of "The British Prize Courts and the War," is a very able, general account of the problems encountered by the British Navy in its control of the seas and its stifling of German commerce. If one feels that at times the defense of recent British practices is carried too far, it is the theory that the past war was a "super-war, . . . in which neutral influence ceases to be a real power" in which the real explanation is to be found. The seeming defense of reprisals and the effort to explain recent English decisions as a development of the previous law of contraband may leave the reader more grateful for the candid attitude toward such recent decisions as that in *The Consul Corfitzon*, in which the House of Lords upheld the captor's compelling a neutral claimant to produce all his commercial records of transactions with the same shipper since a date seven months before the declaration of war. Perhaps it will be difficult for some readers to share Sir Erle Richards' satisfaction that the control exercised by the Allies was "so nearly according to the existing principles of international law," and the implications of the decision in *The Zamora*, as to the freedom of British Prize Courts from executive control, seem somewhat overemphasized.

The article on "Sovereignty and the League of Nations" is quite barren, and that on the "International Labour Conventions," while valuable for its account of international legislation prior to 1914, is inaccurate and misleading as to the work already accomplished by the International Labor Organization established by the Treaty of Versailles. The discussion of "Submarine Warfare" with the conclusion that "the introduction of the submarine does not call for the making of new laws for naval warfare, but demands the rigid application of those hitherto accepted," is altogether too cramped, and will doubtless prove much less serviceable in the future than the kind of approach to be found in James Parker Hall's excellent article on the same subject in the *International Journal of Ethics*. The account of "Changes in the Organization of the Foreign and Diplomatic Service" is of more local interest, but deals with some of the problems for which interest in the same subject seems to be increasing in America. "The Legal Position of Merchantmen in Foreign Ports and National Waters" is a valuable and refreshing treatment of a topic which has assumed new importance in view of the American Shipping Board's control of so many vessels.

Perhaps the most interesting paper in the series is that on "The League of Nations and the Laws of War." It is notable that throughout the volume there runs a buoyant hope for new developments in international law under the League of Nations, but the writer of this article goes further in envisaging these developments mainly in the law of peace. It seems to be his conclusion that the League has brought in a new factor, in that it has now become possible to draw a jural distinction between normal or private wars and super or general wars; and that in the latter no law will hamper effective belligerent action. The recent refusal of the Assembly of the League of Nations to call a conference to codify international law in the light of experience gained during the past war seems to be in line with the writer's insistence that the laws of war

should be given less prominence in the immediate future than they have had during the past century.

The volume contains a list of international agreements entered into during the year 1919, which though it may not be complete, is quite serviceable. The bibliography is also useful, but it might well have noted more of the official publications such as those listed in the Bulletin of the International Intermediary Institute.

M. O. H.

THE LAW OF REAL PROPERTY. By Herbert Thorndike Tiffany. Chicago: Callaghan & Co. 1920. 3 vols. pp. xxxii, 3666.

The exhaustive character of Mr. Tiffany's first edition of 1903 prevents the present volumes from being essentially a new book. They are in substance a second edition, but one of the first rank.

Not many new topics have been added, but the old ones have been enlarged and improved. The summaries in black-faced type at the beginning of each chapter have disappeared, and the citations are greatly increased. Mr. Tiffany has had the good sense to collect here a great number of references not only to leading articles in the law magazines but to the notes of recent cases contained in those periodicals. In the main the list is very full though we miss a reference to Professor Bordwell's articles<sup>1</sup> in connection with section 15 on Disseisin, and a reference to Mr. Abbott's paper<sup>2</sup> on Leases and the Rule against Perpetuities in section 183. Professor Hohfield's classifications<sup>3</sup> are occasionally mentioned with approval (pp. 1202, 1388). The search for and the arrangement and statement of the decisions have been in the main done with conspicuous ability.

The new edition is the best general book on the American Law of Real Property and with Gray's and Kales' works can be said to have completed the analysis of our law and prepared the way for the next stage of scholarly investigation of it in the direction of its reform and remaking.<sup>4</sup> The chapter on future estates and interests has been thoroughly revised. Valuable additions have been made to the nature of contingent remainders, to acceleration of remainders, to shifting and springing uses, and to the subject of executory interests. A particularly thorough section in this chapter is section 167 on the power of destruction of an executory interest by the first taker. We also commend the chapters on estates for years, rents, co-ownership, powers and easements. On the other hand, tenure in the United States, section 13, has been handled too briefly. Mr. Tiffany undoubtedly considered that after Mr. Gray's treatment of it<sup>5</sup> nothing remained to be done. But the subject is worthy of further investigation especially in the states carved out of the Louisiana purchase and the Northwest.<sup>6</sup>

We would have preferred a more widespread expression of the writer's opinion of the legal principles he states so clearly. The hard hitting of a Gray or a Bishop has been of great service to our law, and our law of real property certainly possesses spots where heavy blows may be dealt. For example, we believe that it is Mr. Tiffany's opinion that, contrary to the common statement, there may be a vested remainder after a contingent remainder in fee (section 142). With this view we entirely agree, wishing that Mr. Tiffany had

<sup>1</sup> 29 HARV. L. REV. 374, 501, 731.

<sup>2</sup> 27 YALE L. J. 878.

<sup>3</sup> 23 YALE L. J. 16; 26 YALE L. J. 710.

<sup>4</sup> Professor M. O. Hudson in 34 HARV. L. REV. 338-340.

<sup>5</sup> GRAY, PERPETUITIES, 3 ed., §§ 22-28.

<sup>6</sup> University of Missouri Bulletin, Law Series, 8, p. 3.